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**STANDING ORDER REGARDING REQUIRED  
APPEARANCE BY INTERVENORS IN WORKERS'  
COMPENSATION MATTERS**

On July 8, 2015, the Minnesota Supreme Court rendered its decision in *Sumner v. Jim Lupient Infiniti*, 865 N.W.2d 706 (Minn. 2015). The *Sumner* decision holds that intervenors in workers' compensation matters have a "mandatory duty" to "be present at" all scheduled conferences and hearings, except in cases wherein their interests have been agreed to by stipulation or have been "otherwise established" by virtue of having been filed by motion and not objected to by any party to the case.<sup>1</sup> The *Sumner* decision further holds that "denial of claims for reimbursement" is the statutorily required penalty for violation of this mandatory duty.<sup>2</sup>

The Office of Administrative Hearings (OAH) has lawful authority to allow a party to appear and be present in order to participate in workers' compensation proceedings in person, by telephone or by video conference.<sup>3</sup>

In light of the *Sumner* decision, the Chief Administrative Law Judge finds that it is reasonable, cost-effective and fair to require intervenors to attend and participate in workers' compensation proceedings pursuant to the terms of this Standing Order.

Pursuant to all lawful authority and upon the legal analysis set forth in the attached Memorandum, which is incorporated herein by reference, the Chief Administrative Law Judge now issues the following:

**ORDER**

1. Upon the timely service and filing of a legally compliant motion to intervene and the failure of any served party to timely file objections to same, the intervenor's right to reimbursement for the amount established in the filing, in compliance with Minn. Stat.

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<sup>1</sup> *Sumner*, 865 N.W.2d at 708.

<sup>2</sup> *Id.* at 710.

<sup>3</sup> Minn. Stat. § 176.107 (2014).

§ 176.361, subd. 2(b) (2014), will be deemed established without further appearance by the intervenor, provided that the petitioner's claim is determined to be compensable.<sup>4</sup>

2. Intervenors are required to attend settlement conferences, pretrial conferences, other scheduled prehearing conferences, and hearings through their authorized representative, in person or by telephone.

3. Due to capacity restrictions, intervenors are not allowed to appear at workers' compensation proceedings by video conference except in rare circumstances and for good cause shown.

### **Appearance at Settlement, Pretrial or Other Prehearing Conferences**

4. **Appearance by Telephone.** Except in proceedings scheduled by the Office of Administrative Hearings to be conducted by telephone for all parties, an intervenor must notify the Office of Administrative Hearings of its election to appear at a settlement, pretrial or other prehearing conference by telephone rather than in person. To effectively make an election to appear by telephone, intervenors and other parties affected by the claim of an intervenor must comply with the following procedural steps.

a. **Notice of Election.** The intervenor must affirmatively elect to appear at a settlement conference, pretrial or other prehearing conference by telephone by serving and filing a written statement indicating its election to appear by telephone ("notice of election").

(1) **Form of Notice.** The intervenor must either include the notice of election in its initial motion to intervene or in a completed *Notice of Intervenor's Election to Appear by Telephone at Settlement, Pretrial or Other Prehearing Conference* form substantially similar to that attached as Exhibit A to this Standing Order and available on the website of the Office of Administrative Hearings at [mn.gov/oah/workers/intervenor/](http://mn.gov/oah/workers/intervenor/).

(2) **Content of Notice.** The notice of election must include the name and one telephone contact number for the person who will represent the intervenor at the settlement conference, pretrial or other prehearing conference.

a) Only one telephone number may be provided; additional provided phone numbers will be disregarded.

b) If no contact information is provided in the intervenor's initial motion to intervene or its *Notice of Intervenor's Election to Appear by Telephone at*

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<sup>4</sup> *Sumner*, 865 N.W.2d at 710-11 ("There are only two circumstances in which Minn. Stat. § 176.361, subd. 4, relieves intervenors of the obligation to appear at conferences and hearings.... First, attendance is unnecessary when the parties have signed and filed a stipulation establishing the intervenor's right to reimbursement. See Minn. Stat. § 176.361, subd. 3 (addressing stipulations); .... Second, when an insurer or self-insured employer fails to return a signed stipulation or to object to the claim within 30 days, the intervenor's right to reimbursement 'is deemed established,' which relieves the intervenor of its obligation to appear at conferences and hearings. *Id.*, subds. 3, 4.")

*Settlement, Pretrial or Other Prehearing Conference* form, the Office of Administrative Hearings will not contact the intervenor to request the information. The intervenor's failure to provide the required contact information will be considered a waiver of its election to attend the settlement conference, pretrial or other prehearing conference by telephone and will require the intervenor to attend in person.

(3) Filing. Filing must be made **by emailing to OAH.Interventions@state.mn.us, faxing to 651.539.0300, or otherwise providing the notice of election and required contact information in writing** to the Office of Administrative Hearings. Email is preferred; only one form of filing is necessary. An intervenor's providing the notice of election and/or its representative's required contact information directly to the block assigned or any other judge, in person, by telephone or by any electronic transmission, **will not be deemed sufficient compliance** with this Standing Order and may subject the intervenor to sanctions under Minn. R. 1420.3700 (2015).

(4) Timing. The filing must be served and received by OAH at least 15 days before the scheduled settlement conference, pretrial or other prehearing conference. An intervenor's failure to serve and file a written notice of election within the specified timeframe will be considered a waiver of its election to attend the settlement conference, pretrial or other prehearing conference by telephone, and will require the intervenor to attend in person. Refiling is not required when a settlement conference, pretrial or other prehearing conference is rescheduled.

b. **Objection**. Any party may object to an intervenor's filed notice of election by serving and filing a written objection in compliance with the following requirements.

(1) Form. The objection shall be in writing and shall include a written articulation of a legally sufficient basis therefor.

(2) Filing. An objection shall be made by serving and **emailing the objection to OAH.Interventions@state.mn.us, faxing the objection to 651.539.0300, or otherwise providing the objection in writing** to the Office of Administrative Hearings, Attention: Intervention Objection. Email is preferred; only one form of filing is necessary. A party's providing the objection directly to the block assigned or any other judge, in person, by telephone or by any electronic transmission, **will not be deemed sufficient compliance** with this Standing Order and may subject the party to sanctions under Minn. R. 1420.3700.

(3) Timing. The objection must be served and received by OAH at least 10 days before the scheduled settlement conference, pretrial or other prehearing conference. A party's failure to serve and file an objection within the specified timeframe will be considered consent to the intervenor's election to attend the settlement conference, pretrial or other prehearing conference by telephone.

(4) Determination. Timely filed objections will be referred to the Chief Judge for review and decision.

c. **Election Granted**. Unless otherwise ordered by the Chief Judge, the intervenor is permitted to attend a settlement conference, pretrial or other prehearing conference by telephone as specified in its filed notice of election.

d. **Attendance**. The intervenor's authorized representative shall be readily available **by telephone at the appropriate contact number** as directed below.

(1) Except as set forth in paragraph (2) below, the intervenor shall be available for the full duration of the settlement conference, pretrial or other prehearing conference. Only if and when called as decided by the presiding judge in the exercise of her or his discretion, intervenors may be excused from such portions of the settlement conference, pretrial or other prehearing conference as, in the judge's discretion, do not require further participation by the intervenor, provided that no other party objects to the excusal and same does not prejudice any party to the proceeding.

(2) If an intervenor is scheduled to attend more than one proceeding simultaneously at the Office of Administrative Hearings, the intervenor shall notify the presiding judge of the conflict prior to the commencement of the proceeding and shall make appropriate arrangements to be available upon request of the presiding judge or any party to the proceeding.

e. Failure to Attend. If the intervenor's authorized representative is not present by telephone at the contact number provided by the intervenor if and when called by the presiding judge at any point in time during a settlement conference, pretrial or other prehearing conference, the intervenor's claim will be denied by order of the Chief Judge, subject to proof of good cause for the nonappearance.

f. Effect of Denial. Except as otherwise provided by law, upon denial of an intervenor's claim, it will have no further right to appear as a party in the matter save for a right to appeal pursuant to Minn. Stat. § 176.421 (2014). It may still retain a right to receive payment in reimbursement of the costs of causally related, necessary and reasonable treatment and/or other benefits paid or provided by a third party if another party has made and established the claim.

5. **Appearance in Person**. An intervenor may elect, at any time, to appear in person at a settlement conference, pretrial or other prehearing conference.

a. Failure to Elect. An intervenor's failure to timely serve and file the information required in the *Notice of Intervenor's Election to Appear by Telephone at Settlement, Pretrial or Other Prehearing Conference* form will constitute an election to appear in person.

b. Discretionary Excusal After Appearance Noted. Only upon noting personal appearance to the presiding judge at the settlement conference, pretrial or other prehearing conference, intervenors may be excused from such portions of the

settlement conference, pretrial or other prehearing conference as, in the judge's discretion, do not require further participation by the intervenor, provided that no other party objects to the excusal and same does not prejudice any party to the proceeding.

c. Failure to Attend. If the intervenor's authorized representative is not present in person at the settlement conference, pretrial or other prehearing conference in order to properly note its appearance to the presiding judge if and when called upon to do so, the intervenor's claim will be denied by order of the Chief Judge, subject to proof of good cause for the nonappearance.

d. Effect of Denial. Upon denial of an intervenor's claim, it will have no further right to appear as a party in the matter save for a right to appeal pursuant to Minn. Stat. § 176.421. It may still retain a right to receive payment in reimbursement of the costs of causally related, necessary and reasonable treatment and/or other benefits paid or provided by a third party if any other party has made and established the claim.

### **Appearance at Hearings**

6. Appearance by Telephone. For every hearing scheduled to take place in person or by video conference, an intervenor must notify the Office of Administrative Hearings of its election to appear by telephone rather than in person. Absent an order of the block assigned judge directed to an intervenor in a specific case, an intervenor may not appear at hearing by video conference. To effectively make an election to appear at a hearing by telephone rather than in person, intervenors and other parties affected by the claim of an intervenor must comply with the following procedural steps.

a. **Notice of Election.** The intervenor must affirmatively elect to appear at a hearing by telephone by serving and filing a written statement indicating its election to appear by telephone as specified below.

(1) Form of Notice. The intervenor must include its election to appear by telephone in a completed *Notice of Intervenor's Election to Appear by Telephone at Hearing* form substantially similar to that attached as Exhibit B to this Standing Order and available on the website of the Office of Administrative Hearings at [mn.gov/oah/workers/intervenor/](http://mn.gov/oah/workers/intervenor/). **An intervenor may not include a notice of election to appear by telephone at a hearing in its motion to intervene.**

(2) Filing. The intervenor must file its completed *Notice of Intervenor's Election to Appear by Telephone at Hearing* form **by emailing it to OAH.Interventions@state.mn.us, faxing it to 651.539.0300, or otherwise providing the** completed form to the Office of Administrative Hearings. Email is preferred; only one form of filing is necessary. An intervenor's providing the form directly to the block assigned or any other judge, in person, by telephone or by any electronic transmission, **will not be deemed sufficient compliance** with this Standing Order and may subject the intervenor to sanctions under Minn. R. 1420.3700.

(3) Timing. The filing must be served and received by OAH no less than 15 days before the scheduled hearing. An intervenor's failure to serve and file

a completed *Notice of Intervenor's Election to Appear by Telephone at Hearing* form within the specified timeframe will be considered a waiver of its election to attend the hearing by telephone, and will require the intervenor to attend in person.

b. **Objection.** Any party may object to an intervenor's filed *Notice of Intervenor's Election to Appear by Telephone at Hearing* by serving and filing a written objection in compliance with the following requirements.

(1) Form. The objection shall be in writing and shall include a written articulation of a legally sufficient basis therefor.

(2) Filing. Filing must be made **by emailing the objection to OAH.Interventions@state.mn.us, faxing the objection to 651.539.0300, or otherwise providing the objection in writing** to the Office of Administrative Hearings such that it is received within the identified timeframe. Email is preferred; only one form of filing is necessary. A party's providing the objection directly to the block assigned or any other judge, in person, by telephone or by any electronic transmission, **will not be deemed sufficient compliance** with this Standing Order and may subject the party to sanctions under Minn. R. 1420.3700.

(3) Timing. The objection must be served and received by OAH at least 10 days before the scheduled hearing. A party's failure to serve and file an objection within the specified timeframe will be considered consent to the intervenor's election to attend the hearing by telephone.

(4) Determination. Timely filed objections will be referred to the block assigned judge for review and decision.

c. Election Granted. Unless otherwise ordered by the block assigned judge upon objection of a party or *sua sponte* by the block assigned judge without the filing of an objection, the intervenor is permitted to attend a hearing by telephone as specified in its filed *Notice of Intervenor's Election to Appear by Telephone at Hearing*.

d. Attendance. The intervenor's authorized representative shall be readily available **by telephone at the conference number provided in the Notice of Hearing**, as directed below.

(1) Except as set forth in paragraph (2) below, the intervenor shall be available for the full duration of the hearing. After noting its appearance on the record when called by the presiding judge, intervenors may be excused from such portions of the hearing as, in the judge's discretion, do not require further participation by the intervenor, provided that no other party objects to the excusal and same does not prejudice any party to the proceeding.

(2) If an intervenor is scheduled to attend more than one hearing or other proceeding simultaneously at the Office of Administrative Hearings, the intervenor shall notify the presiding judge of the conflict prior to the commencement of the

hearing and shall make appropriate arrangements to be available upon request of the presiding judge or any party to the proceeding.

e. Failure to Attend. If the intervenor's authorized representative is not present by telephone, at the conference number provided in the Notice of Hearing, when called by the presiding judge at any point in time during a hearing, the intervenor's claim will be denied by order of the block assigned judge, subject to proof of good cause for the nonappearance.

f. Effect of Denial. Upon denial of an intervenor's claim, it will have no further right to appear as a party in the matter, save for a right to appeal pursuant to Minn. Stat. § 176.421. It may still retain a right to receive payment in reimbursement of the costs of causally related, necessary and reasonable treatment and/or other benefits paid or provided by a third party if any other party has made and established the claim.

7. Appearance in Person. At any time, an intervenor may appear in person at a hearing.

a. Failure to Elect. An intervenor's failure to timely file a *Notice of Intervenor's Election to Appear by Telephone at Hearing* will constitute an election to appear in person at the hearing in the matter.

b. Discretionary Excusal After Appearance Noted. Upon noting personal appearance on the record at the hearing, intervenors appearing in person may be excused from such portions of the hearing as, in the judge's discretion, do not require further participation by the intervenor, provided that no other party objects to the excusal and same does not prejudice any party to the proceeding.

c. Failure to Attend. If the intervenor's authorized representative is not present in person at the hearing in order to properly note its appearance on the record, the intervenor's claim will be denied by order of the block assigned judge, subject to proof of good cause for the nonappearance.

d. Effect of Denial. Upon denial of an intervenor's claim, it will have no further right to appear as a party in the matter save for a right to appeal pursuant to Minn. Stat. § 176.421. It may still retain a right to receive payment in reimbursement of the costs of causally related, necessary and reasonable treatment and/or other benefits paid or provided by a third party if any other party has made and established the claim.

8. In cases wherein an employee has made a claim for payment of medical, psychological, chiropractic, podiatric, surgical or hospital treatment pursuant to Minn. Stat. § 176.135 (2014) for other goods or services or for reimbursement of other benefits paid or provided by a third party, the dismissal of an intervenor as a party resulting from the intervenor's non-appearance will not bar an employee from seeking to establish his or her direct claim for reimbursement if such has been properly raised as an issue in the proceedings.

9. For purposes of this Standing Order, good cause generally includes circumstances beyond the intervenor's control such as, but not limited to, proceedings that are scheduled in such a manner that the intervenor receives less than 15 days notice from the Office of Administrative Hearings. Good cause specifically does not include the intervenor's scheduling mistakes or difficulties.

10. This Standing Order will have no effect on the procedures governing administrative conferences brought pursuant to: Minn. Stat. §§ 176.106 (2014) (administrative conferences), 176.239 (2014) (administrative conferences) or 176.341 (2014) (hardship proceedings); Minn. R. 1420.1850 (Parker-Lindberg proceedings); or stipulation status conferences.

**11. This Standing Order will become effective on September 15, 2015.**

12. As of its effective date, this Standing Order will supercede and take the place of any other Order pertaining to intervention claims or interests already issued by a Workers Compensation Judge in any pending matter.

Dated at St. Paul, Minnesota  
this 3rd day of December, 2015.



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TAMMY L. PUST  
Chief Administrative Law Judge  
(651) 361-7830



## MEMORANDUM

Pursuant to Minnesota law, any entity with an interest in a pending workers' compensation matter, "such that the person may either gain or lose by an order or decision," has a right to intervene by motion, if timely served and filed.<sup>5</sup> By motion, the potential intervenor is statutorily required to "show how the applicant's legal rights, duties, or privileges may be determined or affected by the case; state the grounds and purposes for which intervention is sought; and indicate the statutory right to intervene,"<sup>6</sup> and must also file the following with the Office of Administrative Hearings, as applicable:

- (1) an itemization of disability payments showing the period during which the payments were or are being made; the weekly or monthly rate of the payments; and the amount of reimbursement claimed;
- (2) a summary of the medical or treatment payments, or rehabilitation services provided by the Vocational Rehabilitation Unit, broken down by creditor, showing the total bill submitted, the period of treatment or rehabilitation covered by that bill, the amount of payment on that bill, and to whom the payment was made;
- (3) copies of all medical or treatment bills on which some payment was made;
- (4) copies of the work sheets or other information stating how the payments on medical or treatment bills were calculated;
- (5) a copy of the relevant policy or contract provisions upon which the claim for reimbursement is based;
- (6) the name and telephone number of the person representing the intervenor who has authority to reach a settlement of the issues in dispute;
- (7) proof of service or copy of the registered mail receipt;
- (8) at the option of the intervenor, a proposed stipulation which states that all of the payments for which reimbursement is claimed are related to the injury or condition in dispute in the case and that, if the petitioner is successful in proving the compensability of the claim, it is agreed that the sum be reimbursed to the intervenor; and
- (9) if represented by an attorney, the name, address, telephone number, and Minnesota Supreme Court license number of the attorney.<sup>7</sup>

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<sup>5</sup> Minn. Stat. § 176.361 (2014).

<sup>6</sup> *Id.*, subd. 2(b).

<sup>7</sup> *Id.*

If the motion is complete,<sup>8</sup> intervention is granted as a matter of law.

Under the applicable rules, once a potential intervenor<sup>9</sup> files a motion and thereby becomes an intervenor, that intervenor is a full party to the pending matter:

"Intervenor" means *a party* under Minnesota Statutes, section 176.361, who has an interest in a pending workers' compensation proceeding such that the person or entity may either gain or lose by an order or decision in the case, and the person or entity has filed a motion to intervene under part 1415.1250 and Minnesota Statutes, section 176.361.<sup>10</sup>

As a party, an intervenor has a right, and a responsibility, to establish its interest during the proceeding. It can do so prior to a hearing in the matter in at least two ways: (1) by signed stipulation; (2) by timely serving and filing a motion to intervene which draws no objection from any other party. In either of these scenarios, "the intervenor's right to reimbursement for the amount sought is deemed established provided that the petitioner's claim is determined to be compensable."<sup>11</sup>

If an intervenor has not established its right to reimbursement, it is required to attend all scheduled proceedings, including the hearing in the matter:

Unless a stipulation has been signed and filed or the intervenor's right to reimbursement has otherwise been established, the intervenor *shall attend* all settlement or pretrial conferences, administrative conferences,<sup>12</sup> and the hearing. Failure to appear shall result in the denial of the claim for reimbursement.<sup>13</sup>

### **The Sumner Decision**

The Minnesota Supreme Court's *Sumner* decision makes clear that the statute is to be interpreted according to its plain language: intervenors have a "mandatory duty" to attend, which "denotes an affirmative duty to be present,"<sup>14</sup> at all settlement, pretrial or administrative conference and at the hearing in the case; and violation of that mandatory duty requires imposition of the statutory penalty – "the denial of claims for reimbursement."<sup>15</sup> Merely filing a motion to intervene does not meet the statute's

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<sup>8</sup> If the motion is incomplete in any relevant respect, the potential intervenor is sent a Notice of Incomplete Intervention, upon correction of which intervention is eventually granted as a matter of right.

<sup>9</sup> Minn. R. 1420.0200, subp. 15 (2015).

<sup>10</sup> *Id.*, subp. 10 (2015) (emphasis added).

<sup>11</sup> Minn. Stat. § 176.361, subd. 3.

<sup>12</sup> An "administrative conference" is defined by statute as "a meeting conducted by a commissioner's designee where parties can discuss on an expedited basis and in an informal setting their viewpoints concerning disputed issues arising under section 176.102, 176.103, 176.135, 176.136, or 176.239. If the parties are unable to resolve the dispute, the commissioner's designee shall issue an administrative decision under section 176.106 or 176.239." Minn. Stat. § 176.011, subd. 1a (2014).

<sup>13</sup> Minn. Stat. § 176.361, subd. 4.

<sup>14</sup> *Sumner*, 865 N.W.2d. at 709, n. 1.

<sup>15</sup> *Id.* at 708, 711.

mandatory duty to appear.<sup>16</sup> In accord with *Sumner*, the Office of Administrative Hearings will require all intervenors, whose claims have not been otherwise established by stipulation or non-objection, to appear and participate in all scheduled settlement, pretrial and prehearing conferences as well as at all hearings.

### **Type of Appearance Required of Intervenors**

It is important to note that the *Sumner* Court did not address or dictate what form of appearance is required in workers' compensation matters. Instead, the Court limited its decision to the facts before it, which involved intervenors who had failed to make any appearance at all.<sup>17</sup>

Pursuant to existing law, the Office of Administrative Hearings allows parties in workers' compensation matters to appear "in person, by telephone, or by visual or audio teleconferencing methods."<sup>18</sup> Parties routinely are present by telephone at prehearing conferences<sup>19</sup> and by video conference at hearing upon request and agreement of the parties.<sup>20</sup>

In accord with the authority of *Sumner* in light of Chapter 176, the Chief Administrative Law Judge now requires all intervenors in workers' compensation matters, whose claims for reimbursement have not been otherwise established, to be present at all scheduled settlement conferences, pretrials and other prehearing conferences and at hearing, either in person or by telephone, in the manner detailed in this Standing Order. Failure to appear as herein ordered at all proceedings will result in the mandatory denial of the intervenor's claim for reimbursement.

Going forward, intervenors will need to elect which form of appearance they intend to make at each stage of the proceeding: in person or by telephone.<sup>21</sup> Intervenors must make the appropriate election by serving and filing identified information within specified timeframes. The petitioner and the employer/insurer, through counsel as appropriate, have a right to object to the election, in writing, by specifying a legally sufficient basis for the objection. Objections related to appearances at settlement conferences, pretrials or other prehearing conferences will be determined by the Chief Judge; objections related to appearances at hearings will be determined by the block assigned judge.

At each settlement conference, pretrial or other prehearing proceeding, the presiding compensation judge will contact and note the appearance of each intervenor

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<sup>16</sup> *Id.* at 708-709.

<sup>17</sup> *See id.* at 711, n. 3.

<sup>18</sup> Minn. Stat. § 176.107.

<sup>19</sup> *See* Minn. R. 1420.1900 (2015).

<sup>20</sup> *See* Standing Order of the Chief Administrative Law Judge titled "Video Conference Order," accessible at <http://mn.gov/oah/workers/standing-orders/video.jsp>.

<sup>21</sup> This Standing Order is consistent with Minn. R. 1420.1800, subp. 2 (2015), which requires parties, including intervenors to personally attend settlement conferences "unless otherwise excused." The Chief Administrative Law Judge hereby excuses personal attendance at settlement conferences by intervenors who elect to attend by telephone conference, but only within the full parameters of this Standing Order.

**only** if and when the judge, in her or his discretion, determines that an issue has arisen which requires communication with the intervenor. Failure of an intervenor to be available at the telephone number provided by the intervenor, if and when contacted by the compensation judge at any point during the proceeding, will be deemed a failure to appear and will result in mandatory denial of the intervenor's claim for reimbursement. Orders of claim denial will be issued in writing by the Chief Judge.

Hearings will be handled somewhat differently. Notices of Hearing will contain a telephone conference call-in number and an access code unique to each block assigned judge.<sup>22</sup> Intervenors are required to call into the conference number prior to the commencement of the hearing. At every hearing, the presiding judge will note on the record the appearance of every party at the commencement of the proceeding, including any party appearing in person and any party appearing by telephone via the provided conference number. Failure to appear at the commencement of the hearing will result in the mandatory denial of an intervenor's claim for reimbursement. After appearances are noted on the record, intervenors may be excused from such portions of the hearing as, in the judge's discretion, do not require further participation by the intervenor, provided that no other party objects to the excusal and same does not prejudice any party to the proceeding. Notation of the appearance or non-appearance of the intervenors and all other parties will be included in the judge's issued Findings and Order, as will any denial of intervenors' claims for non-appearance.

### **Effect of Denial of Intervenor's Claim on Petitioner's Reimbursement Claim**

The question arises whether the *Sumner* decision has any legal effect on a petitioner/employee's right to claim reimbursement for medical treatment claims in cases where a medical provider has intervened but later had its claim denied for failure to appear. The answer to that question is found in an analysis of existing law.

Although Minn. Stat. § 176.361 allows a provider to intervene as a party in a workers' compensation proceeding in order to seek reimbursement for provided treatment that was reasonable, necessary and causally-connected to an employee's work injury, the intervention statute does not "impair[] the right of the employee to seek direct payment of medical expenses...[:]"

An injured employee is entitled to receive medical treatment which is reasonably required to cure and relieve from the effects of the injury. Minn. Stat. § 176.135, subd. 1. In the event of a dispute over the responsibility for that treatment, this court has previously held that under Minn. Stat. § 176.291 the employee has the right to assert directly any claims for medical expenses.<sup>23</sup>

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<sup>22</sup> In pending cases already noticed for hearing, the Office of Administrative Hearings is in the process of issuing amended Notices of Hearing which contain the conference call-in number and access code, plus instructions for their use in conformity with this Standing Order.

<sup>23</sup> *Adams v. DSR Sales, Inc.*, 64 W.C.D. 396, 397 (Minn. Workers' Comp. Ct. App. 2004) (citing *Hughes v. Edwards Mfg. Co.*, 61 W.C.D. 481 (Minn. Workers' Comp. Ct. App. 2001)).

The Workers' Compensation Court of Appeals describes the employee's reimbursement claim and the intervenor's reimbursement claim as "the same - that is, entitlement to payment of the medical or chiropractic bills incurred by the employee - and in the usual case, the provider relies on the employee and the employee's attorney to pursue payment of the claim."<sup>24</sup> Noting that an intervenor's claim and the employee's claim "present[] the same issues, that is, causal relationship and the reasonableness and necessity of the care provided"<sup>25</sup> and require the same evidence, the appellate court has consistently upheld recovery on a reimbursement claim, and even directed payment according to the statutory fee schedule,<sup>26</sup> without regard to whether the claim is pursued by the employee or by an intervenor provider of medical, psychological, chiropractic, podiatric, surgical or hospital services.<sup>27</sup> Though this case law is grounded in fact scenarios in which the medical provider(s) choose not to intervene at all, nothing in the appellate court's analysis urges any different result in a case wherein an employee/petitioner directly pursues a claim for reimbursement at the same time an intervenor's interest has been denied due to non-appearance.<sup>28</sup>

The *Sumner* decision does not address, nor effect, statutory law or precedential case law in this respect. Therefore, the decision has no effect on the right of an employee to choose whether or not to bring, and seek to establish at hearing or by stipulation, a claim for reimbursement of causally-related, necessary and reasonable treatment expenses.

#### T.L.P.

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<sup>24</sup> *Stoia v. Seagate Technology*, 52 W.C.D. 417, 424 (Minn. Workers' Comp. Ct. App. 1995).

<sup>25</sup> *Id.* at 427.

<sup>26</sup> *Reich v. F & S Construction*, No. WC04-113, 2004 WL 2567139 (Minn. Workers' Comp. Ct. App. Oct. 21, 2004).

<sup>27</sup> See *Stanford v. Shaw*, No. WC08-206, 2009 WL 159039 (Minn. Workers' Comp. Ct. App. Jan. 8, 2009); *Stenseth v. Nordstrom*, No. WC04-151, 2004 WL 2152395 (Minn. Workers' Comp. Ct. App. Aug. 30, 2004).

<sup>28</sup> A different result may be reached in a case involving a denied intervention interest and no direct claim for reimbursement pled or pursued by the employee/petitioner. If in fact the intervenor's claim and the employee's claim are considered to be the same, as judged by the legal issues at stake and the evidence required to establish such, the doctrine of res judicata may ultimately bar any attempt to resurrect the claim in another forum. "The Minnesota Supreme Court has acknowledged that the principles of res judicata apply to decisions of the workers' compensation court in certain instances." *Heine v. Simon*, 674 N.W.2d 411, 421-23 (Minn. Ct. App. 2004) *aff'd in part, rev'd in part*, 702 N.W.2d 752 (Minn. 2005) (citations omitted). "Res judicata precludes parties from raising subsequent claims in a second action when: '(1) the earlier claim involved the same set of factual circumstances; (2) the earlier claim involved the same parties or their privities; (3) there was a final judgment on the merits; (4) the estopped party had a full and fair opportunity to litigate the matter.'" *Brown-Wilbert, Inc. v. Copeland Buhl & Co., P.L.L.P.*, 732 N.W.2d 209, 220 (Minn. 2007) (quoting *Hauschildt v. Beckingham*, 686 N.W.2d 829, 840 (Minn. 2004). "Res judicata applies equally to claims actually litigated and to claims that could have been litigated in the earlier action." *Id.* (citing *State v. Joseph*, 636 N.W.2d 322, 327 (Minn. 2001)).

**STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS**

Workers' Compensation Division, PO Box 64620, St. Paul, Minnesota 55164-0620

WID No.: \_\_\_\_\_

[Please use WID and **NOT** SSN.]

Employee: \_\_\_\_\_

Date(s) of Injury: \_\_\_\_\_

Intervenor: \_\_\_\_\_

**NOTICE OF INTERVENOR'S ELECTION  
TO APPEAR BY TELEPHONE AT  
SETTLEMENT CONFERENCE,  
PRETRIAL OR OTHER PREHEARING  
CONFERENCE**

**File by Email or Fax: [OAH.Interventions@state.mn.us](mailto:OAH.Interventions@state.mn.us)** (for this form only)

**FAX: (651) 539-0300**

The above-named Intervenor elects to appear at the settlement conference, pretrial or other prehearing conference in this matter by telephone, and will be reachable via the identified authorized representative at the telephone number noted below.

Authorized Representative: \_\_\_\_\_

Phone number: \_\_\_\_\_

[Only one phone number may be provided; only one will be used.]

Unless scheduled to appear simultaneously at more than one OAH proceeding,<sup>29</sup> **by filing this election, Intervenor acknowledges that:**

- (1) The presiding judge may or may not attempt to contact the Intervenor by telephone, and will do so only if deemed reasonable and necessary in the sole discretion of the presiding judge; and
- (2) If the Intervenor is called and is not contacted, its claim will be denied by order issued pursuant to Minn. Stat. § 176.361, subd. 4 (2014) and *Sumner v. Jim Lupient Infiniti*, 865 N.W.2d 706 (Minn. 2015).
- (3) If the Intervenor desires to guarantee participation in the proceeding, it should appear in person.

**This Notice must be timely filed with the Office of Administrative Hearings, preferably by email or facsimile transmission, and served on all parties no later than 15 days prior to the scheduled settlement conference, pretrial or other prehearing conference. Unless good cause is shown, untimely requests will not be considered and personal appearance will be required.**

**Dated:** \_\_\_\_\_

\_\_\_\_\_  
[Print Name of Signator]

Copies of this form are available at: [mn.gov/oah/workers/intervenor](http://mn.gov/oah/workers/intervenor)

<sup>29</sup> If simultaneously scheduled to appear at OAH proceedings, **after filing this Notice of Election** the Intervenor should proceed under paragraphs 4.d(2) or 6.d(2) of the Standing Order Regarding Intervention effective September 15, 2015.

**STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS**

Workers' Compensation Division, PO Box 64620, St. Paul, Minnesota 55164-0620

WID No.: \_\_\_\_\_

[Please use WID and **NOT** SSN.]

Employee: \_\_\_\_\_

Date(s) of Injury: \_\_\_\_\_

Intervenor: \_\_\_\_\_

**NOTICE OF INTERVENOR'S ELECTION  
TO APPEAR BY TELEPHONE AT  
HEARING**

**File by Email or Fax: OAH.Interventions@state.mn.us** (for this form only)  
**FAX: (651) 539-0300**

The above-named Intervenor elects to appear at the hearing in this matter by telephone, and will do so by calling in to the conference call as directed in the Notice of Hearing.

Unless scheduled to appear simultaneously at more than one OAH proceeding,<sup>30</sup> **by filing this election, Intervenor acknowledges that:**

- (1) Prior to and by the scheduled beginning of the hearing, the Intervenor will be present on the conference telephone line and prepared to note its appearance on the record when contacted by the presiding judge;
- (2) The presiding judge will call into the conference line and have each Intervenor note its appearance on the record; and
- (3) If the Intervenor is not present on the conference line when called, its claim will be denied by order issued pursuant to Minn. Stat. § 176.361, subd. 4 (2014) and *Sumner v. Jim Lupient Infiniti*, 865 N.W.2d 706 (Minn. 2015).

**This Notice must be timely filed with the Office of Administrative Hearings, preferably by email or facsimile transmission, and served on all parties no later than 15 days prior to the hearing. Unless good cause is shown, untimely requests will not be considered and personal appearance will be required.**

**Dated:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
[Print Name of Signator]

Copies of this form are available at: [mn.gov/oah/workers/intervenor](http://mn.gov/oah/workers/intervenor)

<sup>30</sup> If simultaneously scheduled to appear at OAH proceedings, **after filing this Notice of Election** the Intervenor should proceed under paragraphs 4.d(2) or 6.d(2) of the Standing Order Regarding Intervention effective September 15, 2015.